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SURFACE TRANSPORTATION BOARD APPROVES CSX/NORFOLK SOUTHERN TAKEOVER OF CONRAIL IN OPEN VOTING CONFERENCE

Surface Transportation Board (Board) Chairman Linda J. Morgan and Vice Chairman Gus A. Owen today voted, in open conference, to grant, with several conditions, the application filed by CSX Corporation and CSX Transportation, Inc. (CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (NS) to acquire control of Consolidated Rail Corporation (Conrail) and to divide Conrail's assets between themselves. This transaction, as conditioned, will inject competition into the eastern United States in an unprecedented way.

Benefits of the Merger. The Board's statutory function in reviewing rail mergers is to balance the benefits of the merger against any competitive harm that cannot be mitigated by conditions. Here, the Board found that the benefits of the merger were substantial. The transaction will create two strong competitors in the East that will provide improved rail service opportunities throughout the Northeast and South. Through the development of shared assets and joint access areas, it will bring competition back to many areas that had lost options through the creation of Conrail. Even for localities that are not shared assets areas, it enhances competition. In Buffalo, for example, although not every shipper will have direct service by two carriers under the proposal, the transaction itself provides a two-carrier presence, and under the transaction, the availability of a shared assets area in neighboring New Jersey will discipline CSX's activities in the New York City area. Thus, the Board concluded that, under the transaction, all shippers throughout the East will have more options than they have had in many decades, and more competitive service than they have ever had before.

Additionally, the Board noted that the transaction, which was supported by more than 2,200 shippers from a broad spectrum of commodity groups, 350 public officials, 80 railroads, many state and local government interests throughout the East, and various rail labor employees, will produce over time an impressive $1 billion annually in quantifiable public benefits and numerous other benefits. It will inject capital into the rail infrastructure that will benefit all shippers, not just those that are served by CSX, or NS, or both, and it will create new jobs both on and off of the rail system. The merger should promote competitive balance throughout an entire region of the country, and create a strong rail network in the East that can handle the transportation needs of an expanding economy and advance important economic growth and development in the region.

Conditions Imposed by the Board. The Board has the authority to impose conditions to mitigate harm that a merger would produce. Here, the applicants themselves structured the merger so as to improve the circumstances of shippers and localities throughout the East. Additionally, the applicants responded to the concerns of many affected parties by modifying the proposal through private-sector settlements that further improved the circumstances of a number of shippers and localities. These private-sector agreements—agreements like the National Industrial Traffic League settlement, the United Transportation Union settlement, the Cleveland area environmental settlements, and many more—clearly added value to the proposed transaction, from a competitive perspective and in other ways.

Thus, the conditions that the Board voted to impose, while extensive, recognize the operational and competitive integrity of the proposal and the importance of preserving and promoting privately negotiated agreements. Because government should not be in the business of fundamentally restructuring private-sector initiatives that are inherently sound, the conditions imposed by the Board add value, but not in a way that undermines the value of the transaction itself. The Board's conditions require 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the merger is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that recognize the vital role of smaller railroads and that assist regions such as New York State, New York City, and New England. A full listing of the conditions may be obtained upon request.

The Board's decision was issued today in CSX Corporation and CSX Transportation, Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, Finance Docket No. 33388.

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